

MONTANA LEGISLATIVE HISTORY

Chapter 433 19 83

Bill H 250 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 26 ☒ C

Feb 16 ☒ C

_____ C

_____ C

Date Out Feb 16 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 09 ☒ C

Mar 10 ☒ C

_____ C

_____ C

Mar 10 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

BEVERAGES FROM A PLACE OF WORSHIP OR SCHOOL; AMENDING SECTION
BY REQUEST OF: THE REVENUE OVERSIGHT COMMITTEE

INTRODUCED: 01/14/83

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/14/83

HEARING: 1/22/83

REPORT: 01/26/83, DO PASS, AS AMENDED

2ND READING: 01/28/83, DO PASS AYES: 74; NAYS: 15

3RD READING: 01/31/83, DO PASS AYES: 71; NAYS: 25

TRANSMITTED TO SENATE: 1/31/83

REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY: 02/01/83

HEARING: 3/21/83

DIED IN SENATE COMMITTEE

HB 249 -- SALES -- TO ELIMINATE THE REQUIREMENT THAT A STORE OBTAIN A STORE LICENSE
FROM THE DEPARTMENT OF REVENUE; REPEALING SECTIONS

INTRODUCED: 01/14/83

REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/14/83

HEARING: 1/24/83

REPORT: 01/24/83, DO NOT PASS

OBJECTION: 1/24/83

2ND READING: 01/26/83, DO NOT PASS AYES: 61; NAYS: 38

BILL KILLED

HB 250 -- VINCENT, FABREGA, HARPER, ET AL. -- TO PROVIDE A MANDATORY TERM OF
IMPRISONMENT IN THE COUNTY JAIL UPON A FIRST CONVICTION FOR DRIVING UNDER THE
INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING FOR JAIL TERMS OF CONSECUTIVE HOURS;
PROVIDING FOR JAIL TERMS OF CONSECUTIVE DAYS FOR SUBSEQUENT CONVICTIONS; AMENDING
SECTION

INTRODUCED: 01/14/83

REFERRED TO COMMITTEE ON JUDICIARY: 01/14/83

HEARING: 1/26/83

REPORT: 02/16/83, DO PASS, AS AMENDED

2ND READING: 02/18/83, DO PASS AYES: 71; NAYS: 24

3RD READING: 02/22/83, DO PASS AYES: 75; NAYS: 23

TRANSMITTED TO SENATE: 2/22/83

REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83

HEARING: 3/9/83

REPORT: 3/10/83, BE CONCURRED IN, AS AMENDED

ON MOTION, 3/12/83, THAT PASS CONSIDERATION OF THE BILL BE GIVEN THIS DAY. MOTION
PASSED UNANIMOUSLY.

2ND READING: 03/14/83, BE CONCURRED IN, AS AMENDED AYES: 38; NAYS: 11

3RD READING: 03/16/83 AYES: 41; NAYS: 7

RETURNED TO HOUSE WITH AMENDMENTS: 03/17/83

2ND READING: 03/30/83, BE CONCURRED IN AYES: 60; NAYS: 6

3RD READING: 03/31/83, BE CONCURRED IN AYES: 69; NAYS: 5

TRANSMITTED TO GOVERNOR: 04/03/83

SIGNED: 04/11/83. CHAPTER 433

HB 251 -- SALES -- TO REMOVE THE COUNTY RESIDENCY REQUIREMENT FOR OBTAINING A MARIJUANA
LICENSE; AMENDING SECTION

There were no further proponents.

There were no opponents.

REP. KEYSER stated the material one page 3, lines 1-5 are eliminated from present law. He was concerned with taking out the material that the person was not related or a creditor-type relationship. BECK stated he had no problem leaving that material in the bill. REP. MCBRIDE stated that may have some relation to the person who the commissioners pick. She was willing to follow the committee's recommendation on this.

REP. EUDAILY asked if under present statutes the Highway Department picks up the total cost. BECK replied the party seeking condemnation pays the cost. The Highway Department purchases 94% of the property. The price is determined by the commission. If it is appealed then the trial court awards to the prevailing party. BECK stated there would be no problem with requiring the commissioners be within the same judicial district or county.

HOUSE BILL 250

REP. VINCENT, sponsor, stated this bill will provide a mandatory term of imprisonment in the county jail upon a first conviction for driving under the influence of alcohol or drugs.

REP. VINCENT said in 1981 when he introduced the provision of the DUI statute a number of Representatives would not cosponsor the bill. House Bill 250, however, has 35 sponsors. REP. VINCENT noted how attitudes have changed.

In 1982 there were 84 fewer fatalities on Montana roads compared to 1981. Although it is not fair to claim that all the deaths resulted from DUI, the DUI statute presently on the books has saved some lives.

This bill would require a mandatory one day jail sentence. On the second conviction, the offender would be fined not less than \$300 or more than \$500 and be jailed for a minimum of seven consecutive days and a maximum of 30 days. Three days of the jail sentence may not be suspended unless the judge finds the imposition of the sentence will pose a risk to the offender's physical or mental well-being.

If this bill is strong and enforced properly, it will create an effective deterrent. Knowing you will spend one day in

jail if apprehended and convicted will be a definite deterrent. One day in jail is a sobering experience.

This bill will make the law uniform. REP. VINCENT stated some city judges almost always sentence an offender to one day in jail. Some county Justices of the Peace, however, do not. The lack of uniformity is not fair. The one day jail sentence for first time offenders would be the minimum as well as the maximum sentence. The reckless driving statute does not have a minimum jail sentence. The maximum jail sentence for reckless driving is 90 days. REP. VINCENT asked the committee to find out how often reckless driving jail sentences occur.

REP. VINCENT stated that the provision that allows the judge to suspend the sentence because of a finding that imprisonment may endanger the defendant's physical or mental well-being is a provision to which people might object.

DORIS FISHER, Montanans Against Drunk Drivers (MADD) was in favor of the bill. She felt it would be a mandatory sentence so that it would create a deterrence. We are talking about our friends, not criminals, FISHER stated. We all take many gambles with safety. The law, however, must be a "brick wall." The punishment should be the same for everyone. Not everyone need be thrown into jail to realize the state means business. It just takes one person from a group (social club, fellow worker, neighbor, friend, etc.) for the others to realize the law cannot be manipulated. This is a middle class crime so a mandatory sentence that treats all offenders the same will have a deterrent effect. FISHER stated people who attend court school for the first time are often angry because of the various sentences other offenders received.

The law must be tough to protect other people we love. FISHER stated her 17 year old daughter was run down by a drunk driver in their driveway in Great Falls. She was not strong enough to stop a speeding car from harming her.

FISHER submitted EXHIBITS G and H. EXHIBIT I is a copy of a bumper sticker 7th and 8th grade classes designed that states "PUT THE BRAKE ON DRUNK DRIVING".

JOHN THOMPSON was in support of the bill. Only four people out of eleven that were convicted of DUI actually served time in jail according to THOMPSON's findings in the local newspaper. In the September 5, 1982 paper, Colonel Landon of the Montana Highway Patrol was quoted as saying: "That while a 24 hour sentence does not seem like much, it can act as a big deterrent."

THOMPSON noted that when the committee heard the bill changing the drinking age from 19 to 21 David Brewer stated the legislature was wasting its time on a "bandaid" bill and that we need to get to the core the problem. THOMPSON feels the solution is mandatory sentencing for DUIs.

One of the objectives of the military justice system is to make an example of others. When a person knows that another person has not shown up for work because he is spending time in jail under a DUI charge, that will be a deterrent to him and his friends and family.

THOMPSON stated when Johnny Carson was arrested for DUI he stated on nationwide television "please do not adjust your set, it is just me blushing". He admitted he did something that was wrong and embarrassing. He also stated he regrets the incident and it will never happen again. THOMPSON stated he believes Carson will never do it again.

THOMPSON stated that perhaps opponents to the bill will state that the jails are not big enough. That, however, is not our problem as sober citizens. Five years from now it would be nice if Montana was known as one of the toughest states in the union against drunk drivers.

CATHY SALTZ stated her family was a victim of a drunk driver. On January 19th there was an editorial in the Bozeman Daily Chronicle concerning the rights of the drunk drivers. She wrote EXHIBIT J in response to that editorial. SALTZ stated the accident referred to in her letter happened three years ago. Her life and her families' lives have been changed forever. Her family is currently \$200,000 in debt as a result of the accident. The drunk driver pays only \$25 per month per each child involved in the accident. The question of rights should be considered.

BARBARA VANT HULL, MADD, was for the bill. She asked how would you care for a child who was so injured that they could not care for themselves? There is not a rehabilitation center in Montana for this. It is hard to find care. She stated a 22 year old man was paralyzed as a result of drinking and driving. That man is now very aggressive. He has no control over his body. He has been placed in a number of hospitals and nursing homes; yet because of his aggressive behavior the personnel cannot handle him.

Her own daughter was involved in a drunk driving accident that has left her paralyzed and in a wheelchair. She is unable to speak and is blind.

A 44 year old man that was involved in a drunk driving accident has brainstem damage and no control over his bodily functions.

There is a great financial and emotional damage to people who cannot function. EXHIBIT K. More people have been damaged by drunk drivers than in all of the Vietnam war.

MARY DOUBEK, MADD, also spoke in favor of the bill. DOUBEK felt the majority of people would obey this proposed law. Instead of considering how harsh the bill is the committee should consider the victims of drunk drivers. The bill could also save the drunk driver from himself. The penalty should fit the crime. DOUBEK wondered why people would not want such a law. EXHIBIT L.

STEVE KING, representing Shodair Chemical Treatment Center, spoke in favor of the bill. KING felt that a formal evaluation should be part of the alcohol information course. In Minnesota an offender is formally evaluated and a recommendation is sent back to the court.

BILL WARE, Montana Chief of Police Association supports the bill. The Association does not feel that one day in jail is an extensive punishment for this crime.

BETTY WING, Deputy County Attorney in Missoula, represented Missoula County Task Force for the Prevention of Drunk Driving. She supported the bill for reasons previously mentioned. WING suggested the bill be amended to require a written statement from a licensed physician or psychologist for the dismissal of a jail sentence under the medical escape clause. She stated that it is overused and a written statement should be mandatory. There are some cases where it is a serious problem to place an offender in jail. For the jail to assume the liability is often far too wide. Therefore, the medical escape clause is good if it is not overused.

People are often annoyed at having to pay the fine for drunk driving or having their insurance rates go up. It would be a real deterrent for the offender to go to jail and wear the blue outfits. That would definitely be a deterrent.

WING noted other traffic offenses have penalties of from 10 days to up to 90 days in jail. The 24 hour imprisonment is not that much time. WING felt a maximum jail sentence of 90 days for the first offense should be amended into the bill. The time could be suspended if the offender obtains help towards his problem or if he pays the victim restitution.

WING noted the following statistics other states have towards DUI offenders:

North Dakota	3 days
South Dakota	30 days
California	4 days - 6 months
Wyoming	30 days
Washington	1 day - 1 year
New Mexico	30 - 90 days
Idaho	up to 6 months
Texas	3 days - 2 years

Montana is at the bottom of the list. EXHIBIT M.

Justice of the Peace in Cascade County, GLADYS VANCE, was in favor of the bill. VANCE read testimony from EXHIBIT N. Her suggested amendment is listed on page 5 of her testimony.

There were no further proponents.

MYRON PITCH, a city judge, was opposed to the bill as written. He suggested the committee consider VANCE's proposal (EXHIBIT N). If the tools are taken away from the judges, they will have no control over the people. Rehabilitation factors should be considered. People who cannot afford to attend court ordered driving school may be held in contempt of court. Sentences for second offenders should be discretionary rather than mandatory. Most of the second offenders (8 out of 10) are chronic alcoholics. These are the type of offenders who once out of jail do the same thing again. PITCH stated warrants are issued when an offender does not attend court or court school. PITCH stated he was not really an opponent of the bill but wanted the committee to be aware of the Judge's problems.

MIKE MCCABE, Justice of the Peace, was opposed to the bill as written. MCCABE stated the average burglary results in a loss of \$500. The average traffic fatality results in a loss of \$250,000. For every 2,000 DUI offenders only one is actually arrested. The bill does not address the problem. Regardless of the punishment the people will continue to drive. MCCABE felt that 24 hours in jail is nothing.

MCCABE stated that a district court judge has ruled that sentencing a person to Lewis & Clark County jail for more than a few days is cruel and unusual punishment because of the deterioration of the jail, and that it does not meet federal standards.

It is a privilege and not a right to drive a car. The bill should be amended to state that the first offense would be an automatic suspension of his drivers license for a period of 30 days. On repeat offenses the punishment should be increased.

MARCELL TURCOTT, Montana Magistrates Court, stated he was neither for nor against the bill. Four years ago the legislature took away the best tool available - \$500 fine and six months in jail. That tool was held over DUIs to have them go to school at Galen. TURCOTT was interested in being involved in a subcommittee on the bill.

There were no further opponents.

In closing REP. VINCENT stated the committee should consider this bill with the other bills of similar nature. REP. VINCENT stated he was somewhat disappointed with the testimony concerning what judges used to have as an effective tool. He questioned whether it was utilized effectively when it was in effect.

Alcoholism cannot be used as an excuse to avoid responsibility to society. Sooner or later everyone needs to be held accountable for their actions. Twenty four hours does not offer a quick remedy for alcoholism but it helps place an offender in the process. There are provisions for rehabilitation in the bill that the courts can implement. Before rehabilitation can occur the drunk driver must realize that he is wrong.

REP. VINCENT felt the medical escape clause was good. Coming from a family of three chronic alcoholics, REP. VINCENT is aware of the problems. Drinking is a choice and a right; but drinking and driving is wrong and is an infringement on the rights of others.

REP. KEYSER stated he wanted to testify as a proponent of the bill, but was detained in another meeting.

REP. HANNAH was in support of the bill. He asked if alcoholism is a disease. KING stated the American Medical Association has recognized it as a disease. HANNAH stated he does not feel it is a disease and that we are within our rights to put someone in jail. If it was a disease it would be comparable to putting a person with polio in jail. KING stated the alcoholic is the last one to know he has a problem.

REP. J. BROWN asked what the cost of court school is and who pays for it. MCCABE stated the cost three years ago was \$50.

Today it is \$125. If the person cannot pay the cost the person goes without the schooling. The cost varies throughout the state. In Missoula, Cascade, Ravalli and Cascade the cost is \$75.

CHAIRMAN BROWN asked about the problem of overcrowding in Montana's jails. Previous testimony has indicated judges might be reluctant to send offenders to jail because of overcrowding. REP. VINCENT stated it is a concern but we should not solve the problem by negating our responsibility. In California a referendum that would appropriate millions of dollars to establish a prison was passed. The people had the choice of either building a new prison or letting the guilty not pay for their crimes. Gallatin County has recognized the need for better jails. It would be worthwhile for the legislature to help out.

REP. SPAETH asked if the 24 hours is from when the person is apprehended or when the court sentences him. REP. VINCENT stated his intent would be after sentencing. VANCE replied the statutes provide that people are given credit for time served.

REP. ADDY stated he was the victim of a drunk driver and he agrees with the problem. It seems there is a question as to whether the prosecutor or the judge should have discretion. WING stated it works both ways. Instituting mandatory minimum sentences removes some of the judge's discretion. There are some cases that the prosecution would want to dismiss the case rather than put someone in jail. On the other hand, prosecutors have always had a lot of discretion and probably always will. If an offense provides for mandatory jail time, charge bargaining will undoubtedly be discussed. Many people will not plead guilty if they know they will be in jail. Prosecutors will have to decide if there is enough evidence to go to trial or not. REP. ADDY asked if the judge or the prosecutor is subject to the most scrutiny. WING stated the judge is.

REP. VINCENT stated some of the concerns of the committee will be negated when it has all the drinking bills before it. The only evidence needed to convict a person is the chemical test of 1.0 alcohol in the blood.

FISHER stated that although the jails are full, so are the hospitals and the cemeteries. The people would like offenders prosecuted. If people disobey the law, they must be dealt with. A judge is better equipped to handle it.

REP. FARRIS stated in Great Falls a recent bond issued failed for the building of a new jail. There comes a time when the property owners say no.

REP. SPAETH asked if this would solve or just reduce the problem. WING stated if it was reduced even slightly it would help out. It cannot be eliminated.

REP. ADDY asked if the burden of a jury trial increases will not the prosecution be forced to charge bargain more. WING stated that could be a consideration. However, she would rather drop a less important case then to say they just don't have time for a DUI case.

REP. PISTORIA noted he would make information available to the subcommittee concerning Florida and California laws.

REP. VELEBER asked how the bill would relate to drugs. KING stated it is hard to identify the usage of drugs.

REP. VINCENT stated a bumpersticker that came out of a junior high school was "Drunk drivers bring families together - at the funeral".

The hearing on the bill closed. EXHIBITS O and P were given to the committee.

HOUSE BILL 238

REP. VINCENT, sponsor, stated House Bill 238 is an act requiring certain merchants to provide notice of materialmen's liens or waivers of those liens to owners of private dwellings and reduction of the lien amount upon failure to comply. REP. VINCENT offered EXHIBIT Q, amendments to the bill.

REP. VINCENT stated there is a problem in the construction industry. He related the case of a homeowner who had a furnace installed costing \$2,500. The contractor for the job supplied a furnace. Upon completion of the job the homeowner paid the contractor the balance due. In this instance, the contractor did not pay the materialmen for the furnace. The materialmen went to the homeowner for payment of the furnace by placing a lien on his home until payment is received. This put the homeowner in a bind because he had to pay twice for the furnace.

Although there is an argument that the materialmen must be protected, the consumer does not have the same type of protection.

HB 250
Exhibit G
1/26/83

WITNESS STATEMENT

Name DORIS FISHER Committee On _____
Address 1815 SOURDOUGH RD. Date 1-26-83
BOZEMAN, MT.
Representing MADD Support ✓
Bill No. 250 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. MANDATORY SENTENCING ONLY FAIR
DETERRENT FOR DUI CONVICTIONS
 2. BEHAVIOR ONLY CHANGES WHEN IT HAS TO !
 3. SOCIETY HAS RIGHTS TO SAFETY.
 4. JAIL SENTENCE TOUCHES THE EGO —
MONEY IS FORGOTTEN.
- STOP BAD BEHAVIOR FIRST TIME — VICTIMS
CAN ONLY DIE ONCE —

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

MADD

HB 250
Exhibit H
1/26/83

Anabelle Phillips

Nancy Vandeventer

Ray Houghton

Howard Boxmeyer

Doris Fisher

MONTANAN'S AGAINST DRUNK DRIVING

615 So. 16th
Bozeman, MT 59715

JANUARY 1983

OUR MONTANA LEGISLATORS:

All of the members of Montana Against Drunk Drivers join together to ask your support of DUI proposed legislation. We have the enthusiastic support of the PEOPLE. Law enforcement is really doing their job and all of you certainly helped the cause tremendously by passing HB 364, the DUI sentencing bill last time. The problem is in the Court! There are holes that need to be plugged if we are to give the drunk driver the idea that—

IF YOU DRINK AND DRIVE, YOUR CHANCES OF GETTING CAUGHT ARE GREAT AND YOU WILL BE PROSECUTED!

Only if this attitude exists, will we have a deterrent.

Judge Joe Gary of Callatin County says, "This is a middle class crime. It will respond to a deterrent. You only have to pick up one lawyer, one college professor, one frat brother, one plumber and all of his peers will realize that they could get caught. This is one instance in which I feel that mandatory sentencing will have a real deterrent effect."

PEOPLE said: "All of this noise about drunk driving wouldn't work and no law could help. Drinking is part of being a Montanan!" The good news is: 84 MONTANANS ARE ALIVE IN '83! VOTING, PAYING TAXES AND ADMIRING THE BLUE SKIES! 84 is the difference in life loss between 1981 and 1982 in auto fatalities. The awareness, the enforcement and the new law are working!

We have all heard, "The jails are full, we can't lock up drunks!" MADD says: "The cemeteries and hospitals are full too!" At a MADD rally in Billings, a man stood up and said, "Let's let all the robbers go and lock up the killers!" A cute senior citizen stood up and asked, "Couldn't the drunk drivers take a number and serve their time when there was a vacancy at the jail?" The people have answers to all of the excuses for not prosecuting drunks !!!

We need your support for:

Mandatory first offense sentencing—The crime is the same for all.

Illegal per se: It is against the law to drive with a blood alcohol of .1. Nobody can do it safely.

Administrative per se: A refusal suspends the license for 6 months. There will be less incentive for refusal.

Early Suspension Law: The license has to be taken at the time of the arrest for DUI, instead of months later; maybe after another arrest or accident.

Funding for 20 Breathalizers: Law enforcement needs tools to do the job. These will cost \$100,000. Drunk drivers in Montana cost \$400,000 per day in property loss. The breathalizers will be used for years—not one day.

PLEASE HELP!

Sincerely,

Doris Fisher

418 250
Exhibit I

1/26/83

**PUT THE BRAKE ON
DRUNK DRIVING**

NB 250
Exhibit J
1/26/83

January 19, 1983
Box 1200
Belgrade, Mt. 59714

Editors, Bozeman Daily Chronicle
32 S. Rouse Ave.
Bozeman, Mt. 59715

Dear Sirs:

Your Editorial of January 19th concerning the rights of drunk drivers does indeed raise some questions about peoples' rights. Let's talk about some of the rights people should have and about the wanton violation of those rights by drunk drivers.

On August 12, 1980, my parents Ed and Sid Clarkin, my sister Holley, my daughter, Janelle and her friend Rhonda Van Dieat were on their way to Bozeman on Old Highway 10 when a drunk driver crossed the center line and hit them head-on. My Dad was killed instantly. My Mother died before she could be transported to the hospital. The three girls suffered broken bones and internal injuries requiring extensive hospitalization, surgeries and medical and dental treatment which continues to this day.

These victims had a right to expect to arrive safely at their destination. A drunk driver violated this right.

The girls' injuries were so extensive that extended hospitalization and homecare including tutors for their schooling was required for several months.

The taxpayers of the school districts involved paid for the tutors.

The taxpayers also paid for the defense and court costs for the trial that ensued. Taxpayers have a right to better use of their money than paying for an accident that didn't need to happen.

The people who stopped immediately after the accident to render aid were confronted with the gruesome and horrifying results. One woman told me that she suffered terrible nightmares for weeks after the accident. These people had a right to be spared the horrible, upsetting sight of that accident.

And what about the customers in my Dad's drugstore. They had a right to expect his continued professional care and friendship for many years to come.

What about the right to a pleasant retirement after nearly forty years of hard work and community service? My parents had a right to their retirement that was destroyed by the drunk driver.

What about the little grandchildren who were too small to really grasp the tragedy? They had a right to the loving and precious relationship that existed between them and their grandparents. That can never be replaced.

We could talk forever about the rights people have or should have. Everybody is so busy talking RIGHTS that they neglect to talk RESPONSIBILITY.

What is really important is that we recognize this terrible problem and get to work on solving it. Thank God there are people like those in MADD who are actively involved in getting changes made in the laws.

If people don't like the proposed legislation, they should get busy and propose something better.

The bottom line is to get the drunk driver off the road. Their lives as well as ours, are at stake. They have been a public menace causing a private hell for too long.

The only people for whom this question of rights is mute, are the DEAD.

Catherine Clarkin Saltz

Catherine Clarkin Saltz

WITNESS STATEMENT

Exhibit K
1/26/83

NAME Burkessa West Veil BILL No. 250
ADDRESS 4321 N. 9th Bowman Mtn DATE 1/26/83
WHOM DO YOU REPRESENT MADD
SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Consider the waste of lives. Over
millions have been injured to the point
where they are dependent on the
family and state for care and
rehabilitation. Montana has lost
many vital people to unnecessary
injuries. The state has no adequate
rehab. centers for those who need
it. More people have been injured
by drunk drivers than in all the
Vietnam war. (Gran. Newsweek 11/82).
In the Vietnam war men became
maimed for their country. The
injuries of Montana were not
maimed for any reason other
than someone's love of the battle,
and lack of discretion.

HB 250
Exhibit L
1/26/83

WITNESS STATEMENT

Name Mrs. Mary C. Doubek Committee On Judiciary
Address 7645 N. Montana Ave. Date 1/26/83
Representing myself, friends, family MADD Support ✓
Bill No. HB #250 Oppose _____
(wife, mother of seven, grandmother of ten
teacher.) Amend if medical excuse clause
is inserted I suggest a
comparable penalty to serve as a
deterrent.

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. I think this bill would be a strong deterrent to drinking too much & then driving. Instead of considering this 24 hr. mandatory jail sentence harsh for this, which offense, how about considering the harsh sentence the victim of drunken driving receives. Really, in the long-run the driver is benefitted because this bill if enacted into law could save the driver himself from possibly committing a major offense later.
2. This bill would place responsibility & foresight on the driver which is a plus rather than the hindsight after an accident which is a definite minus.
3. It's only fair to announce "loud & clear" what the penalty would be for an offense, the penalty should fit the crime & I think this one does. Please support HB #250. Why would people be reluctant to support this bill? The man who invented the Electric Chair was the first one to sit in it. Would people be afraid they might get caught & spend 24 hrs in jail? This would help people to wake ahead & see the consequences of their actions. Please support HB #250. Thank you.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

an ounce of prevention is worth a pound of cure.
The talk about "tough love" today. This is tough love.

HB 250

Exhibit M

1/26/83

WITNESS STATEMENT

Name BETTY WING Committee On JUDICIARY
 Address 329 So 2ND WEST, MISSOULA Date 1/26/83
 Representing MISSOULA COUNTY TASK FORCE FOR THE
PREVENTION OF DRUNK DRIVING Support X
 Bill No. 250 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The Task Force supports HB 250 with 24 hour jail time as a preventative measure. It will send a message to the people of the state that DUI is to be taken seriously and will be treated as such.
2. a short jail sentence is a very effective means of punishment and prevention. a person who spends time in jail rarely commits the offense a second time.
3. I request an amendment to provide a maximum jail sentence, preferably 90 days for first offense and 6 month for second offense.
4. Please compare the 24 hour maximum to penalty for other offenses — 90 days for reckless driving, 10 days for all other traffic offenses.

Please compare the 24 hour maximum to other states.

North Dakota	3 days	New Mexico	30 - 90 days
South Dakota	30 days	Idaho	to 6 months
California	4 days - 6 mo	Texas	3 days - 2 yr
Wyoming	30 days		
Washington	1 day - 1 year		

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

NB 250
Exhibit N
1/26/83

TESTIMONY JANUARY 26, 1983
GLADYS M. VANCE, IN SUPPORT OF HB250

Ladies & Gentlemen of the House Judiciary:

I am Gladys M. Vance, a Justice of the Peace in Cascade County and City Judge in Belt. I have been in office for 4 years. In 1982, of the 5 other Judges in Cascade, Lewis & Clark, Choteau, Judith Basin and Teton Counties, comprising our particular Patrol Division, 133 DUI's were documented and I handled 44 of them. Add 3 from Belt and 31 from Cascade County Sheriff's and you have 78 - multiplied by 4 and you have 312. I believe that should adequately demonstrate that I have had some experience in this area of concern.

I am here in support of HB250; but I would ask you hear me out, as I share with you my experiences and frustrations, and consider a possible amendment or revision to the bill to more adequately deal with drivers who drink.

I particularly am going to ask you to consider a six-month period of time which the Court could suspend on certain conditions and would have jurisdiction (or the power to control) on the first and second offenses.

I support the mandatory language change from "may" to "shall" if we are going to have a mandatory sentence because there is a lot of "judge shopping" without it. Even with the mandatory language, we will get impassioned speeches regarding claustrophobia, social disgrace, etc., causing greater stress on the defendant's mental well being. And, then, there always appears the bad backs and the neck braces at time of sentencing. I, personally, will not consider not imposing the jail time without a supportive medical opinion and then - only then - will I consider trading the jail time for treatment.

In seeking that medical opinion, we uncover many underlying reasons why that person has turned to alcohol and in that process alone, we are intervening in that person's life by helping them discover why they are drinking, let alone driving. Let me share with you - one war story - of a 26 year-old beautiful, young woman who looked 40. She was before me for DUI - Second Offense, thus a possible 30 days in jail or a minimum of seven. Realistically, three if her

attorney fights hard enough. I ordered a psychological evaluation prior to sentencing and we found that underneath it all, this young woman was not an alcoholic but had been raped two years earlier; the assailant was not convicted, and my defendant was hell-bent on self-destruction through the bottle, skipping from one bar to the other, searching for what - she knew naught - because she was not dealing with her feelings of self-worth or non-worth, however you choose to look at it. Yes, I was happy to order her to treatment in a stress treatment center in California in lieu of jail.

I am concerned about the consecutive requirement. Number One because we must statutorily give credit for time spent in jail so that the defendant on the surface looks like he is only being required to spend a lesser time and perhaps has given the impression of not being equal.

When it comes to spending seven consecutive days, we are talking about perhaps costing that person his job because very few have vacation or sick time if employed. Believe me, it's a lot tougher to know you have to spend your next days off over a period of time in jail not implying that additional jail time will not be effective, but, I am saying that jail time alone is not enough.

I am sure you are trying to deal with the inequities in the system such as - deferred prosecutions (for which there is no statutory provision) and deferred impositions of sentence (which is statutorily forbidden on DUI's); but, mandating a numerical jail time will increase those inequities. If Judges and prosecutors insist on ignoring the law, let the voters deal with them at the next election; don't let the actions of a few deprive or jeopardize the efforts of the rest of us.

It is realistic to mandate a certain number of days in a certain order when our jails are already full. We are actually - at this time - having to consider when to sentence depending on our jail capacities. That's the real world folks.

Now, I think we all agree that alcoholism is a disease - one that causes us to lose control of our minds and our bodies.

Granted, DUI's are not all alcoholics - but, the majority are - they just haven't been caught driving. We are not dealing with the

staggering skid row bum as a DUI image tends to portray in our minds. We are dealing with people of all ages, with jobs, responsible ones with families - and, if we can intervene in their lives - they will keep those jobs and those families and live a long productive life.

What happens when a person walks out of Court after sentencing as it is now? After they serve their 24 hours or 30 days? Nothing, absolutely nothing, as far as the Court is concerned. Why is that? It is because the Court has lost its power or, in legal terms, jurisdiction. Even if the Court has suspended part of the fine on certain conditions and the defendant doesn't meet those conditions, all we can do is bring them back on a civil contempt warrant, threaten some more, give them another day in jail and add up to \$100 onto the balance due and they are off and driving drunk until the next time. And - again the Court has lost its power.

Can we do anything with a disease in 24 hours or even 30 days? We can usually go to bed with the flu for a couple days and it's over. If we have a virus, it might take a full 30 days to recover.

But, if we are dealing with alcoholism - we are looking at an incurable, terminal disease - just like cancer - and we all understand cancer. Alcoholism grows - just like cancer - and, we cannot cure it. The person will have it all their remaining life.

We can, however, teach that person how to control the disease and regain control of their life. - But, we can't do it in 24 hours or even 30 days - or sometimes even six months which I would implore you to consider.

There is also, always those who will drink and drive without licenses or insurance or anything else and for those people, I say lock them up and throw away the key!

Give the J.P. Courts six months to suspend on first and second offenses - six months to intervene - six months to educate - or go to jail. Support, aftercare and follow-up are so terribly important after treatment or they fall back in the same old pattern, with the same old crowd - and, unfortunately, many times go back to the same using family. Court school takes 5 weeks. Treatment takes 28 days.

Give us six months to hold over their heads - over their conduct and that is more of a deterrent - more of a threat than any 24 hours or

seven days. We don't forget quickly six months of being accountable whereas we do forget 24 hours and, yes, even seven days.

Give those of us who would like to try to help put a stop to drivers who drink, the tools that we need to intervene in these people's lives.

You have given us six months for someone who strikes another; who damages another's property; who writes a bad check. Certainly a drunk driver can cause as much if not more injury to another - even death. Certainly a drunk driver causes more damage to another's property; and, I think you should all relate to that statement (it's called "hit & run" 6, 7, 8 vehicles at a time).

You have given us 90 days for a first offense reckless driver; mandatory 10 days and possible six months for a second offense reckless driver. Doesn't common sense tell us that a driver under the influence poses as much - I say more - of a threat to the rest of us as a reckless driver? You have given us six months for three traffic misdemeanors within a year (speeding, stop sign violations).

I know of no legal, moral or any other reason why we cannot consider a possible six-month penalty for a DUI.

Thank you very much for listening to my frustrations. I appreciate your consideration and I also understand your dilemma and your sincerity as you listen to all of us and sort through the mountains of paper trying to achieve a better world.

May I share with you a prayer that I used long before I discovered it is the prayer of the alcoholic.

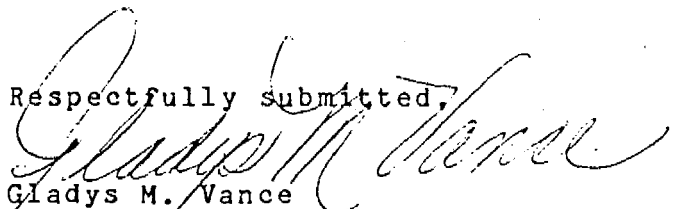
God grant me the serenity
To accept the things I cannot change,
Courage to change the things I can,
And wisdom to know the difference.

Ladies and Gentlemen, you have the power to bring about change; yes, it will take courage; but together, understanding public pressures and separating what looks good on paper but doesn't work and channeling it towards a workable plan perhaps we can achieve that elusive quality known as "justice" for all.

I have attached to your copies a sample of the proper wording to assist you in making your decision. If any of you have any questions,

I will be happy to answer them.

Respectfully submitted,


Gladys M. Vance

Justice of the Peace Cascade County
761-6700 extension 480

Suggested wording for amendment:

- (1) A person convicted of a violation of 61-8-401 shall be punished upon a first conviction by imprisonment for a period of not more than six months; 24 hours of which may not be suspended or deferred; and shall be punished by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.
- (2) On a second conviction, he shall be punished by imprisonment for a period of not more than six months; () days of which may not be suspended or deferred; and shall be punished by a fine of not less than \$300 or more than \$500. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

NB250
Exhibit O
1/26/83

Proposed Amendments to HB250

1. Page 1, line 16,
Following: "te"
Insert: "not less than"
2. Page 1, line 16,
Following: "hours"
Insert: "or more than 30 days"

AmendHB250/BCDII

VISITOR'S REGISTER

COMMITTEE

DATE January 26, 1983

SPONSOR Rep. Vincent

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE BILL 250

REPRESENTATIVE ADDY moved that the bill DO PASS. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE ADDY moved that the bill be amended on page 1, line 15, following "for" insert "not less than" and on line 16, following "hours" insert "or more than 60 days" on page 1, line 23, strike "consecutive" on line 24, strike "30 days" and insert "6 months" and on page 2, lines 4 and 5, strike "30 consecutive" and insert "90". REPRESENTATIVE JENSEN seconded the amendments.

REPRESENTATIVE ADDY explained that this bill does state a mandatory minimum, which is truly a minimum; this gives the judge discretion to impose a sterner penalty and gives him discretion on the second penalty with regard to consecutive days. He informed the committee that in Sunday's Billings Gazette, there was a whole article concerning overcrowding at the city jail; the city judge is no longer sentencing anybody to jail as they are not letting them in; they are sharing jail facilities with Hardin and Laurel; and by allowing the judge to sentence for seven days to be served on weekends or evenings, it allows the judge a bit more creativity. He also indicated that he did feel that six months in certain aggravated situations is not too much.

REPRESENTATIVE DARKO spoke in favor of the amendments, saying that they are basically a one-industry community; if the workers are put in jail, it interferes with their ability to work; they are fired and not only does the person who has been put in jail suffer, but the family also. She thought that by the sentence not being served consecutively, it would be of a benefit.

REPRESENTATIVE JENSEN commented that he particularly liked the first amendment, as the testimony from the judges is that they would like some control on the first offense - they would not only have 24 hour minimum, but would also have some additional control. He thought that up to sixty days could steer these people into some kind of program of one kind or another. He commented that without the authority, the judges would put somebody in jail; and 24 hours later, they will be out and, in many cases, abusing again.

REPRESENTATIVE KEYSER commented that he did not mind the first amendment, but he had some problems with the second one, because they are talking about the second conviction of driving under the influence of alcohol; the judge is going to put him in there for one day, lets him out for three, then going to send him up to Hardin the second day, then bring him back and he finally gets his seven days in. He did not feel that this is the deterrent that is being sought in this bill. He thought that the public wants a deterrent; and for a second conviction, he did not feel that that was too steep.

REPRESENTATIVE EUDAILY noted that if they adopt that second amendment, they will have to change the title too.

REPRESENTATIVE ADDY indicated that if the judge, on a second conviction for DUI, didn't feel that the conviction was necessary, the prosecutor could charge them with something else; and he thought that they should have that second DUI on their records. He said that if you sentence someone to jail for seven consecutive days because of DUI, who are you going to let go. He said that is what the judges are going to be facing, but he felt that seven consecutive days would put an administrative burden on the judges.

REPRESENTATIVE KEYSER commented that he thought the counties should face up to the problems they are having. REPRESENTATIVE ADDY emphasized that he agreed with that and he has been arguing that for the last two years.

REPRESENTATIVE SPAETH expressed surprise that his justice of peace and his city judge, who are law-and-order judges, were very distressed with this and thought it was a terrible thing. He said they did not have trouble with the adding on, but they were distressed with the consecutive days; they essentially wanted some flexibility as they have a good working relationship with the alcoholic program; and they said that, if we do that to them, they will essentially not be sending anyone to jail. He asserted that they do believe in punishing these people.

REPRESENTATIVE HANNAH commented that he was confused, since they killed a bill a few weeks ago relating to chastising judges for not sentencing people according to statutes; now

we hear that the judges are saying that they are not going to obey the law; and they are not going to put people in jail. He contended that a judge has a responsibility and his responsibility is to sentence people according to the law. He thought the legislature's responsibility is to decide whether we want to put sentencing requirements on the books; and if there is a jail problem, that is the responsibility of the county.

CHAIRMAN DAVE BROWN declared that by passing bills like this and a lot of others that we have had in this session, that we are totally ignoring the administrative burden that is placed on local governments; and he felt that we place them in an impossible position. He stated that he also has problems with the first amendment relating to 24 consecutive hours and not leaving that up to the judge. He explained that the Continental Oil Refinery in Billings has a very strong alcoholic treatment program and the bulk of the cases (those individuals picked up for DUI or a violation that resembles DUI) are sentenced by the judge to a mandatory alcohol treatment program and there is a major network that goes on between the employer, the employee and the court system. He felt that this serves justice but that individual is given a chance for correction; and in passing bills like this, they are selling some people down the river and he did not feel that they should do this.

REPRESENTATIVE ADDY said that they know how he feels about mandatory minimum sentences, but he thought that this is truly a minimum, at least for the first offense. He explained what he is trying to propose here is something that is slightly disagreeable with everything they could pass. He felt that they should send a message out of here that alcohol abuse is not going to be an excuse.

REPRESENTATIVE KEYSER moved that they segregate the amendments. A vote was taken on the first amendment on page 1, lines 15 and 16, following "for" insert, "not less than" and following "hours" insert "or more than 60 days". The motion carried with 13 voting aye and 5 voting no. See ROLL CALL VOTE.

Judiciary Committee
February 16, 1983 - P.M.
Page Seven

A vote was taken on the second amendment, on page 1, line 23, strike "consecutive" and on line 24, strike "30 days" and insert "6 months". The motion carried with REPRESENTATIVE RAMIREZ, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE SEIFERT, REPRESENTATIVE FARRIS, REPRESENTATIVE IVERSON and REPRESENTATIVE KEYSER voting no.

A vote was taken on the third amendment, on page 2, lines 4 and 5, strike "30 consecutive" and insert "90". The motion carried with 12 voting aye and 6 voting no. See ROLL CALL VOTE.

REPRESENTATIVE EUDAILY said that he had something written down but he can't remember - a medical escape clause on the top of page 2 and on lines 19 and 20. REPRESENTATIVE ADDY said that the one area in which a judge can exercise some discretion is if he finds that the imposition of jail sentence will impose a risk to a defendant's physical or mental well being; and some witnesses indicated that they would need a note from the doctor.

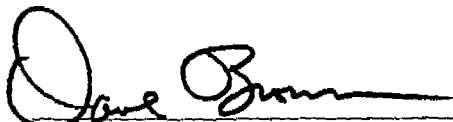
REPRESENTATIVE JENSEN replied that he did not think that was unreasonable in the light of at least one recent jail death.

REPRESENTATIVE SEIFERT wondered if judges are usually so available that the 24 hours would not be up before they could get in touch with a judge. REPRESENTATIVE ADDY replied that that would be part of the pre-sentencing report, and this would be available at the time of sentencing.

REPRESENTATIVE JENSEN commented that if someone had attempted suicide, the judge might want to take that into consideration before they put him in jail.

A vote was taken on the DO PASS AS AMENDED. The motion carried with REPRESENTATIVE SEIFERT, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE FARRIS and REPRESENTATIVE IVERSON voting no.

The meeting adjourned at 5:16 p.m.


DAVE BROWN, Chairman


Alice Omang, Secretary

February 16, 1983

MR. **SPEAKER:**We, your committee on **JUDICIARY**having had under consideration **HOUSE** Bill No. **250**First reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A MANDATORY TERM OF IMPRISONMENT IN THE COUNTY JAIL UPON A FIRST CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING FOR JAIL TERMS OF CONSECUTIVE DAYS FOR SUBSEQUENT CONVICTIONS; AMENDING SECTION 61-8-714, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **250****BE AMENDED AS FOLLOWS:**

1. Title, line 7.

Strike: "PROVIDING FOR JAIL TERMS OF CONSECUTIVE DAYS"

Insert: "INCREASING THE PENALTIES"

2. Page 1, line 15.

Following: "for"

Insert: "not less than"

3. Page 1, line 16.

Following: "hours"

Insert: "or more than 60 days"

4. Page 1, line 23.

Strike: "consecutive"~~XXXX~~
DO PASS

HOUSE BILL 250

(2 of 2)

.....February 16,..... 1933.....

5. Page 1, line 24.

Strike: "30 days"

Insert: "6 months"

6. Page 2, lines 4 and 5.

Strike: "30 consecutive"

Insert: "90"

AND AS AMENDED
DO PASS

.....DAVE BROWN.....

Chairman.

Bob Rechlin, representing the Cascade County Sheriff's Office, submitted written testimony from Glenn G. Osborne, Sheriff of Cascade County (see attached Exhibit "D") along with a news article from The Virginia Weekly (see attached Exhibit "E").

Pat Warnecke, Associate Warden, testified as to the need of more pre-release centers. Mr. Warnecke stated that during the special session of the Legislature, it was felt there might not be enough trustees to fill a pre-release center. Mr. Warnecke testified that at the present time, there are enough trustees waiting to fill two pre-release centers and the State of Montana is unable to meet the needs of inmates.

Karen Mikota, representing the Montana League of Women Voters, testified that pre-release centers are essential. She stated they help with counseling, study and restitution.

Cathy Campbell, representing the Montana Association of Churches testified that pre-release centers are essential and she supports individualized correction programs and submitted written testimony (see attached Exhibit "F").

Curt Chisholm of the Montana Department of Institutions, stated that the Legislature's support is needed if we are to get the support of the communities in opening pre-release centers. He stated pre-release centers are a sensible alternative to incarceration.

Representative Bergene closed by asking the Committee to support passage of HJR23.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

There being no further discussion by the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 250: Representative Vincent testified that the purpose of HB250 is to save lives and to make previous legislation against drunk driving better. This bill will show the citizens that the Legislature does not condone drinking and driving and if you do, you will pay the penalty. Representative Vincent stated that the key part to this bill is the first offense. He stated we must let the public know they will spend time in jail if they are convicted. Representative Vincent stated that although many people feel these changes would make the law too tough, many other states have drunk driving laws which are a lot more stringent.

PROPOSERS: Doris Fisher, representing MADD, submitted written testimony (see attached Exhibit "G") telling her own personal story and supporting HB250. Mrs. Fisher stated that 24 hours in jail would be the biggest deterrent to drinking and driving.

Mrs. Fisher also submitted written testimony from Judge Gary supporting HB250 (see attached Exhibit "H").

Larry Majerus, representing the Motor Vehicle Division of the Montana Department of Justice, distributed a proposed amendment to HB250 requiring at least 48 hours of the mandatory jail sentence to be consecutive (see attached Exhibit "I").

Michael Wood, representing the Missoula County Drunk Driving Task Force, submitted written testimony (see attached Exhibit "J") stating that drunk driving is a public health problem and the fourth leading cause of accidents in Montana. He reminded the Committee that the Montana Constitution has a guarantee of a clean and healthy environment. Mr. Wood urged the Committee to give a DO PASS AS AMENDED to HB 250. Mr. Wood then submitted the written testimony of Jim Nugent, City Attorney for Missoula, Montana (attached as Exhibit "K").

Marcel Turcotte, representing the Montana Magistrates Association, stated that his position on HB250 is neutral. Mr. Turcotte explained that he had fought the bill in the House for the reason that it takes away the judge's discretion in sentencing.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek raised questions with Representative Vincent with regard to plea bargaining for reducing DUI's to wreckless driving and Representative Vincent advised that HB540 would dramatically change plea bargaining situations.

Senator Berg questioned Representative Vincent about what a city like Billings would do in a situation where their jails are full. Representative Vincent stated that we must not tailor legislation to accommodate this situation.

CONSIDERATION OF HOUSE BILL 660: Representative Hansen asked the Committee to establish a mechanism for complaints to pursue a complaint either before the Human Rights Commission or District Court because the number of cases is growing. Representative Hansen feels this would establish a simple procedure and resolve 90 percent of the cases. If the case were not settled within 180 days, the complainant could go to District Court.

PROPONENTS: Anne MacIntyre, the staff attorney of the Montana Human Rights Commission, testified in favor of HB660. She submitted written testimony from John L. Frankino, Chairman of the Human Rights Commission (see attached Exhibit "L").

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3-9-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

COMMITTEE ON

Judiciary

DATE

3-9-83

VISITORS' REGISTER

NAME

REPRESENTING

BILL #

Check One
Support Oppose

Jan Reagon

Self

194

X

Larry Maderus

Mtn. Vehicle Div

250

Amend

D. B. Tolley

DRIVER Services

250

"

Bob RECHLIN

CASCADIA COUNTY STMT. & DES. 23

H5R 23

X

Cathy Campbell

Mt. Assn. of Churches

H5R 23

X

Karin Mikata

Mt. League of Women Voters 23

23

X

Steve King

Shadown Hospital

194

X

Anne McIntyre

Human Rights Comon.

HB660

X

SHARON S FINNEY

MONTANA PTA

HB145

X

Michael Wood

Missoula County Stunk Driving Force

250

Amend X

Terri Fisher

MADD

250

X

Alice Morrison

MADD

250

X

Michael Hucab

Montana High Tech Assoc.

250

INTEREST

3/9/83

Our MADD group is asking for your help in designing a deterrent for the drunk driver. MANDATORY SENTENCING HB 250 and HB 540 ILLEGAL PER SE are giant deterrents for our manulative society. We have all become accustomed to a very dangerous habit---DRINKING AND DRIVING!!

We all make choices with safety and line up the odds. Life is one gamble! Is it worth \$5 to speed? The seat belt bothers me! The deterrent has to be a brick wall---No Exceptions and no special people. We are all special and a lot of special people are the victims.

We are not dealing with the hardened criminal whose case differs. What possible excuse could be given that would give me the right to threaten your life with a car? We are dealing with a middle-class crime, a social problem of bad behavior! If one person in my social circle was really confronted with facing a jail sentence, my whole peer group would stop and say, "That could be me!" If everyone knows that if he gets caught for DWI and is found guilty, he will spend 24 hours in jail, the impact on behavior will be big. It has already helped. Many JP's are putting all first offenders in jail for 24 hours and the awareness of that community has been raised and the deaths in Montana are down by 84! Even if the deaths were down by 1--that 1 could be YOU are someone you love.

We hear so much of rights! and "That's not fair!" Do you know who complains most about "that's not fair"? The offenders who meet and greet in the alcohol education courses are very angry with the offenders who did not have to put in a jail time. "How come some drunks are special?," they ask. We are all indeed equal and the deed and the threat on the highway are the same.

I have sat in on many trials! Our judge would ask after the trial, "Is this the first time you have ever driven when you were drunk?" I have never heard anyone answer, "Yes!" It is not the first offense--it is the FIRST TIME CAUGHT! Wouldn't it be better for the offender if he was deterred, or really confronted about his alcohol abuse the first time out and before he is a Coroner's case or causes one?

FAIR is a big four letter word!; so is LOVE and sometimes love has to be strong and tough. Love and laws have to be tough enough to protect all of us.

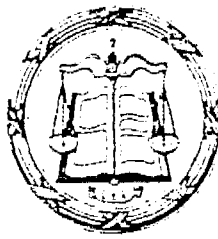
About Rights! My daughter was run down by a drunk driver in our family driveway. She had the right to live in this Montana which she loved. She raised calves; trained a horse to jump, worked as a swimming teacher at age 17 so that she would be assured of a summer job each year when college was on vacation. She had been accepted to MSU and really looked forward to going to college. She had a right to; she was on the honor society, took all the prep courses and her grandfather had saved from his teaching salary to set up a fund, because he had a right to be a part of her dream. He had been a college professor at MSU and now would have a grandchild as a student. But, a physically fit, strong willed, BEAUTIFUL GIRL with lots of freckles, brains and dreams was not strong enough to face a car going 70MPH in her front yard.

The Clinical Phychiatrist in Bozeman says that only when you touch a person's ego, will he remember. 24 hours in jail, where all are treated the same, would touch anyone's ego. It isn't a big punishment; No one will fire you from your job, for missing one day; most judges give the offender the choice of days, but I would have certainly spent 24 hours in jail for Lori and more!!!

It will help!! It already has but to make it fair, it has to be mandatory!

This problem responds to AMARENESS, EDUCATION AND LAW ENFORCEMENT but first we need a solid, fair law to enforce.

THE PEOPLE ARE READY TO FACE SOME BEHAVIOR CHANGES BUT WE ONLY CHANGE WHEN WE HAVE TO!



Eighteenth Judicial District

JOSEPH B. GARY
DISTRICT JUDGE

IONE T. DANIELS
COURT REPORTER

8 March 1983

Senate Judiciary Committee
Montana State Senate
Helena, Montana

Ladies and Gentlemen:

As a District Court Judge I have previously appeared before the House committee hearings on mandatory sentencing and have opposed the adoption of mandatory sentencing. This is based primarily on the experience I have had in four years on the bench that the individuals involved in criminal activities are so varied in background that an applications of a determinate sentence to all persons could result in injustice and an improper administration of criminal justice. Based upon my philosophy, the advocacy of a mandatory sentence for conviction of driving under the influence of alchohol represents a departure from that philosophy that I have developed over a period of years.

First of all, I have found that DWI is a crime that more than often is committed by persons that are ordinarily law abiding citizens not involved in the criminal milieu. Secondly, I find it a much more reprehensible crime with such awful ramifications; death, maiming, terrible loss of enjoyment of life to the victim and thier families so that it requires more stringent penalties. We judges don't hesitate to order a person to jail for stealing an item in excess of \$150.00 in value and our local police judge will jail a person for 24 hours for shoplifting a \$1.00 item, yet we hesitate about jailing someone who had driven a potentially lethal weapon that can wreak destruction on himself and others. In fairness, I might add, our police judge likewise generally jails a DWI defender upon conviction for 1 day also.

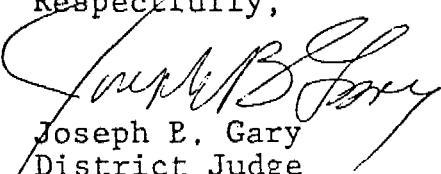
From my experience as a judge and the studies I have made, I am not convinced that punishment for the general criminal laws per se has a detrimental effect to others committing the same or similar crime.

However, in relation to DWI, I feel that a jail sentence could be a deterrent. If you jailed one lawyer for a day, every lawyer in the district would know of that and the next time the other lawyer had one too many, the thought of his colleague in jail could certainly be a deterrent to his driving, I believe. This should permeate all segments of society, a carpenter, a fireman, a doctor, a teacher, ad infinitum.

My long time partner, Hjalmar Landoe visited relatives in Norway and found that the Scandinavians deal so severely with DWI so that if a number of persons is going out on a party, they always designate a driver who is mandated not to have one drink. In Sweden, I am advised, that a one-time conviction for DWI results in a mandatory lifetime revocation of the defenders drivers license. (Authority, NBC TODAY program, March 8, 1983).

What is being advocated is not as severe as that but will be a possible step forward in deterring continued carnage. For this reason I advocate the passage of House Bill #250.

Respectfully,



Joseph E. Gary
District Judge

EXHIBIT "I"

PROPOSED AMENDMENT TO HB 250

The following amendments to HB 250 are proposed in order to render the State of Montana eligible to receive federal funding under the Incentive Grant Program for Alcohol Traffic Safety Programs:

p. 1, line 12:

ADD: PROVIDING FOR JAIL TERMS OF CONSECUTIVE HOURS

p. 2, line 5:

After "days", ADD: , at least 48 hours of which must be served consecutively,

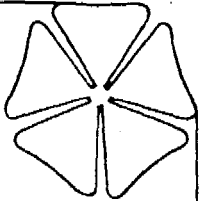
p. 2, line 12:

After "days" ADD: , at least 48 hours of which must be served consecutively,



MISSOULA CITY-COUNTY HEALTH DEPARTMENT

301 West Alder • Missoula, Montana 59802 • Ph. (406) 721-5700



Testimony on HB 250

I am Michael Wood, M.S., M.P.H., manager of the Missoula County Drunk Driver Prevention Program at the Missoula City-County Health Department. I represent a 30-member task force of many disciplines and organizations concerned about drunk driving. We strongly support House Bill 250.

It is well known that 50% of the 50,000 automobile fatalities (25,000) occurring in this country each year are alcohol related.¹ (In Montana, 60-65% of all drivers killed in traffic accidents had been drinking.²) Additionally, 25% of U.S. non-fatal crashes are alcohol related, and drunk drivers are associated with 750,000 injuries per year. Drunk driving is a serious public health problem. It is the number one killer of Americans under age 40 and a very significant cause of death for those over 40.³

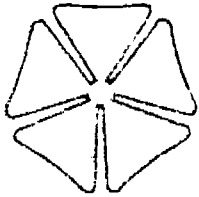
You, as senators representing your constituents, have a unique opportunity to send a strong message to Montana drivers: We will not tolerate drunk driving in Montana. If one drives drunk and gets convicted of DUI, you will go to jail, plain and simple.

While this may seem a harsh punishment to some of you, consider again the serious consequences of drunk driving. I would also remind you that Montana has a unique guarantee within its constitution: the guarantee of a "clean and healthful environment." I would suggest that the slaughter on our highways because of drunk driving does not constitute a "healthful environment." Just the fear of driving on U.S. 93 at night, for example, with drunk drivers poised to cross the center line is enough of a threat to my "healthful environment" for us to take action.

I would also encourage you to support HB 250 with the proposed language by the Attorney General's office providing for a mandatory 48 consecutive hour imprisonment upon 2nd and subsequent offenses. The passage of this amended bill, coupled with SB 313 (breath test refusal penalty increase) and HB 540 (the per se bill) will make Montana eligible for \$300,000 in drunk driving prevention grants. A combination of tougher laws and public education will begin to address the problem in a much more comprehensive and effective way.

Please support HB 250. You will be saving the lives of many Montanans, including perhaps your own family and friends.

1. Alcohol Health and Research World, Volume 7, Number 1. Fall 1982.
2. "A Driver's Guide to Drinking," Montana Highway Traffic Safety Division. Undated.
3. "A Manual for Managing Community Alcohol Safety Education Campaigns," National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation. November 1982.



THE GARDEN CITY
HUB OF FIVE VALLEYS

Missoula, Montana 59802

March 8, 1983

OFFICE OF CITY ATTORNEY
201 West Spruce Street
Phone 721-4700

83-171

Senate Judiciary Committee
Montana State Senate
Montana State Capitol
Helena, Montana 59620

Re: House Bill 250 - Mandatory Term
of Imprisonment and Increasing
Penalties for Driving Under the
Influence of Alcohol

Dear Senate Judiciary Committee Members:

I would like to take this opportunity to strongly urge your support for the enactment of House Bill 250, which, as amended, is entitled "An Act to Provide a Mandatory Term of Imprisonment in the County Jail Upon a First Conviction for Driving Under the Influence of ALCOHOL OR DRUGS; Increasing the Penalties for Subsequent Convictions." I have prosecuted driving under the influence of alcohol offenses for the City of Missoula for slightly more than seven and one-half (7½) years. I believe that existing driving under the influence of alcohol or drug penalties for imprisonment are extremely lenient, considering the very real potential dangers and hazards to people and property created by the operator of a motor vehicle who is under the influence of alcohol or drugs. I consider driving under the influence of alcohol to be the most serious misdemeanor motor vehicle offense in the State of Montana.

When I initially began prosecuting criminal offenses for the City of Missoula, the potential statutory imprisonment penalty allowed a lower court and district court on appeal the flexibility of imposing a sentence of up to six (6) months in jail for a first or second D.U.I. offender. Then the State legislature eliminated imprisonment as a penalty for first offenses and reduced the potential imprisonment penalty for second offenses to thirty (30) days. Later the State legislature amended the law again and authorized one (1) day of imprisonment for a first offender and a range of seven (7) to thirty (30) days for a second offender. Section 61-8-711, M.C.A., authorizes up to ten (10) days' imprisonment for any first violation of Title 61, Chapter 8, M.C.A., pertaining to State traffic regulation during a one-year period, unless a different penalty is expressly provided for.

K.

Senate Judiciary Committee

Page 2

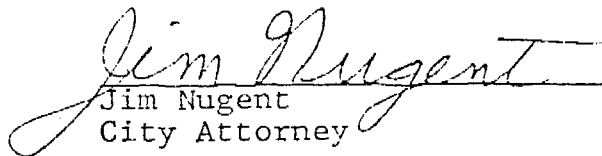
March 8, 1983

Thus, technically an offender could be imprisoned for up to ten (10) days for a first offense within a year for a parking violation, illegal turn, speeding, etc., but only one (1) day for a D.U.I. offense, which, as I indicated above, I consider to be the most serious misdemeanor motor vehicle offense.

House Bill 250 deserves your support for the reason that it is a step in the right direction toward increasing the severity of driving under the influence of alcohol or drug penalties so that those penalties more adequately reflect the potential dangers and severe consequences that exist for people and property whenever an operator of a motor vehicle who is under the influence of alcohol or drugs operates a motor vehicle. Most importantly, hopefully HB 250 with its mandatory imprisonment provisions, will also be helpful in serving as a deterrent to people driving under the influence of alcohol or drugs as well as be helpful in creating a greater public awareness and appreciation of very serious dangers for people and property that are created by a driver under the influence of drugs or alcohol.

Thus, I strongly urge your support for HB 250. Thank you for considering my comments.

Yours truly,


Jim Nugent
City Attorney

JN/jd

cc: Judge Wallace N. Clark
Police Chief Sabe Pfau

There being no further questions from the Committee, Representative Waldron closed by stating that he was not happy to have to carry this bill, but he is very concerned with the effects of the overcrowded conditions at the prison.

ACTION ON HOUSE BILL 546: The Chairman announced the Committee was ready to consider executive action on this bill. Senator Mazurek moved HB546 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 272: Senator Daniels expressed concern with how the residents near Swan River Youth Camp will feel about this bill. Senator Halligan moved HB272 BE CONCURRED IN. The motion carried with Senators Crippen, Brown and Daniels voting in opposition.

ACTION ON HOUSE BILL 619: Senator Shaw moved that HB619 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 194: All Senators agreed there is a problem with the use of "maximum age." Senator Crippen suggested the term "legal age." Senator Mazurek felt that any change in the term would confuse the electors. Senator Crippen moved that HB194 BE CONCURRED IN. This motion passed unanimously.

ACTION ON HOUSE JOINT RESOLUTION 23: Senator Halligan moved that HJR23 BE ADOPTED. This motion carried with Senator Brown voting in opposition.

ACTION ON HOUSE BILL 642: Counsel for the Committee distributed proposed amendments and reviewed. Senator Mazurek was concerned with privately owned clubs which are not open to the public. Senator Crippen moved that the proposed amendments to HB642 BE ADOPTED. This motion carried unanimously. Senator Galt moved that HB642 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 660: Senator Crippen moved to TABLE HB660. This motion carried with Senator Berg voting in opposition.

ACTION ON HOUSE BILL 575: Senator Mazurek stated he had made an error in tabling this bill and made a motion to reconsider that action. This motion carried unanimously. Senator Mazurek then moved that HB575 BE CONCURRED IN. This motion carried unanimously and it was agreed Senator Mazurek would carry the bill.

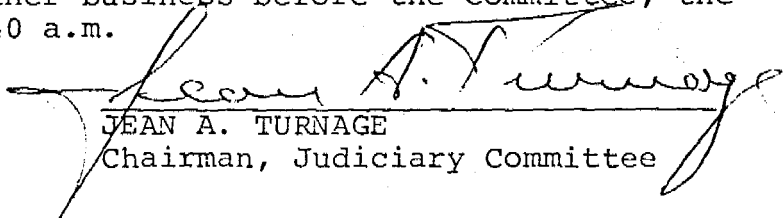
ACTION ON HOUSE BILL 250: Senator Mazurek was concerned that a \$500 to \$1,000 fine would mean that the crime was no longer triable in justice court and would have to go to district court. Senator Shaw stated that he wasn't sure a mandatory sentence would help habitual offenders.

Senate Judiciary Committee
•March 10, 1983
Page 5

Senator Mazurek moved to adopt the amendments as proposed by Larry Majerus, and to include a semi-colon after the word "hours" on page 1, line 12 of the title. This motion passed unanimously. Senator Mazurek then moved an additional amendment which would replace 90 days with 30 days on page 2, line 12. This motion also carried unanimously. Senator Brown moved that HB250 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 562: The Committee had problems with the issue of consent. Senator Mazurek stated that he had some amendments which he would propose to the Committee at a later date.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:40 a.m.



JEAN A. TURNAGE

Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3-10-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 10 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration House Bill No. 250

Vincent (Brown)

Respectfully report as follows: That House Bill No. 250

third reading bill, be amended as follows:

1. Title, line 12.
Following: "DRUGS;"
Insert: "PROVIDING FOR JAIL TERMS OF CONSECUTIVE HOURS;"
2. Page 2, line 5.
Following: "days"
Insert: ", at lease 48 hours of which must be served consecutively,"
3. Page 2, line 12.
Following: "90"
Insert: "30"
Following: "days"
Insert: ", at least 48 hours of which must be served consecutively,"

And, as so amended,

~~DO PASS~~ BE CONCURRED IN

J.C.